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IN THE

Supreme Court of the United States

No. 593

October Term, 1946

FRANCIS R. COPE, JR.,

Petitioner,

v.

A. M. ANDERSON, Receiver,

Respondent.

BRIEF FOR RESPONDENT

ROBERT S. MARX,
FRANK E. WOOD,
HARRY KASFIR,
VINCENT C. VELDORALE,
WM. C. KELLY,
Counsel for Respondent.

NICHOLS, WOOD, MARX & GINTER,
Of Counsel.

THE JOHNSON & HARDIN CO., LAW PRINTERS
CINCINNATI, OHIO

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BRIEF FOR RESPONDENT

INTRODUCTION

The question for decision is one of substantive federal law—In what jurisdiction did Respondent's cause of action arise, within the meaning of the Pennsylvania borrowing statute?

Petitioner's theory proceeds on the assumption (1) that a material "operative fact" was the failure of the holding company's shareholders to pay and (2) that "operative fact" occurred within the territorial limits of the State of Kentucky. Having no defense on the merits and amen-

distinct and to which Petitioner was not a party. *McClaine* v. *Rankin*, 197 U. S. 154, 161.

The liability arose out of the ownership of intangible personal property—BancoKentucky Company stock. Under the terms of membership in the Delaware corporation, the situs of its stock, "for all purposes of title" except taxation, was Delaware. Section 73, Del. Corp. Law. For purposes of taxation, the situs of that stock was Pennsylvania. 51 Amer. Jur. Taxation, pp. 496, 497. Petitioner "contracted" his liability at the situs of his ownership. The place where the bank failed is of no more significance in this case than the place where a maker of a promissory note defaults, in connection with the liability of an endorser who executed *his contract* in some other jurisdiction. 11 Amer. Jur. Conflict of Laws, p. 447; *Musson* v. *Lake*, 45 U. S. 262.

Petitioner correctly represents (B. p. 14) that Respondent notified Banco shareholders that he planned to collect the assessment from them, if unsuccessful in the action against Banco. But the statement "He also sent letters to all shareholders of Banco directing *said shareholders* to make payment at his office," is not supported by the record. All the Respondent did was to warn Banco shareholders he would look to them if he could not recover from Banco. That was done solely to reserve Respondent's rights and in anticipation of the defense, later asserted and overruled, that Banco shareholders were excused from liability by an election to look to the holding company. If that notice could possibly be interpreted as an attempt by the Receiver to require Respondent to pay in Kentucky, it could have no more effect on this claim than the conduct of the receiver in *LaParr* v. *City of Rockford*, 100 Fed. (2d) 564 (C. C. A. 7, cert. den., 307 U. S. 624). There a receiver, without lawful authorization, paid the city's deposit in full. Rescission was ordered because the payment was in excess of the legal powers of both the Comptroller

and the receiver. Respondent's predecessor was equally powerless to fix a place for the payment of Petitioner's debt.

Petitioner argues that he would have had to have paid in Louisville in any event, that being the law. Neither federal statute, nor decisions construing them, disclose any such duty. But it is said that there was no place other than Louisville, Kentucky, "at which tender or payment could have been made," and that "tender by defendant at his home, Dimock, Susquehanna County, Pennsylvania—certainly would not have satisfied his statutory obligation." This case presents no issue of tender, such as might avoid a forfeiture or the payment of interest. Tender, like failure of payment, gets into this case by way of argument in support of a motion to dismiss.

Respondent's contention that the cause of action arose in the country, is said to presuppose that the whole does not include its parts. Of course, the whole does include its parts, but if the parts have no significance in the deciding problem at hand, there is only the whole to consider.

The court below correctly concluded that Respondent's cause of action did not arise in Kentucky any more than it did in any other state. This is said to ignore the fact that, geographically, the United States is a Federal Union of states "and not a separate geographical entity where a cause of action can arise." Citing *Texas* v. *White*, 74 U. S. 700. The argument is that, "geographically such a cause of action, if it arises in the continental United States, must of necessity arise in one of the states of the United States or the District of Columbia."

In *Texas* v. *White*, the court discussed the several connotations attributed to the word "state," concluding that the primary conception is that of a people, or community. Regarding the Union, it was said (p. 721):

> "It is the union of such states, under a common constitution, which forms the distinct and *greater political unit*, which that Constitution designates as the United States, and makes of the people and states which compose it *one people and one country.*"

Petitioner is a citizen of this country, and with respect to the privileges, rights and duties which such citizenship surrounds him, it is of no importance that, geographically, he exercise such rights, or is compelled to recognize such obligations, in Dimock, Susquehanna County, Pennsylvania, or in any other place located in a county and state.

With Petitioner's approach, we could as well say that a tort giving rise to a cause of action must arise within the country, within some state, within some municipal corporation and within the boundaries of someone's property. But we are concerned here with systems of laws which shape the legal consequences of man's conduct. The boundaries of municipal corporations within which something takes place, giving rise to a legally enforcible right, are only of importance when the *laws* of these communities may govern such right.

The legal consequences of conduct within the boundaries of a state may or may not be of permissible concern to the state. The laws of the State of Washington create a cause of action against an employer for the wrongful death of an employee. Such a death, within the boundaries of that state, but also in the Puget Sound Navy Yard, had no such consequence because the place where the death occurred was within the exclusive jurisdiction of the laws of the United States. *Murray* v. *Gerrich*, 291 U. S. 315. California may not regulate the sale or use of alcoholic beverages in a national park within its boundaries. *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 530. Under state law, innkeepers are liable for the loss of a guest's belongings, but that law may not be the measure of an innkeeper's liability

when the hotel is in a national park, though the park is within the state. *Arlington Hotel* v. *Fant*, 278 U. S. 439. And a state is powerless to punish for crimes committed on federal property which is within the exclusive jurisdiction of federal laws. *Stewart* v. *Sadrakula*, 309 U. S. 94, 101. This country's gold at Fort Knox is not in Kentucky so far as that state is concerned.

The Pennsylvania borrowing statute is perfectly clear in its reference to "the state or country *in which* it arose." It has reference to some system of jurisprudence other than Pennsylvania's. It refers to some other sovereign power.

Something of the same geographical argument as Petitioner's was advanced by the state officials in *McCulloch* v. *Maryland*, 17 Wheat. 315. Chief Justice Marshall there discussed our system of federal and state governments, which, though existing within the same territorial limits, have separate spheres within which each is supreme. The State of Maryland argued that the Constitution of our country was a creation of independent and sovereign states which delegated powers to it and that the states alone were truly sovereign. The Court held that the Constitution emanated from all the people (p. 402). The fact that the people, citizens of sovereign states, acted within the territorial limits of their states was only of geographical importance.

> "No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act, they act in their states. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measures of the state governments. . . .
>
> "If any one proposition could command the universal assent of mankind, we might expect it would be this—

able to suit only in Pennsylvania, Petitioner is compelled to argue that Kentucky is the state within which the cause of action arose. This contention is based upon a misconception of the nature of the statutory liability and a misinterpretation of the language, purpose and effect of the notice sent to all Banco shareholders throughout the country, that the Receiver intended to look to them for payment of the holding company's liability on the trustees' participation shares to the extent that company was unable to respond.

Though the liability sought to be enforced contains no element of contract, is not based on any wrong or default, and the cause averred presents not even an inference on the subject of payment, Petitioner proceeds to answer the question for decision first by assuming a different cause of action and then answering the question by resort to principles of contract law and tort law applicable to state created rights.

QUESTIONS PRESENTED*

Petitioner's brief poses three questions:

> "1. Is the suit barred by the Pennsylvania Act of June 26, 1895, a part of the general limitation law of the forum, which 'borrows' the limitation period of the State where the cause of action arose?"

The Act of 1895 borrows the period of the "state *or country* in which it arose."**

> "2. Does the limitation law of the forum apply in an action by a receiver of a national bank to enforce the double liability of its shareholders, which liability has its origin in a federal statute?"

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* Throughout this brief Respondent follows the order of arrangement in Petitioner's brief.

** Emphasis is Respondents, unless otherwise noted.

Respondent has always conceded that the limitation law of the forum does apply and the court below so found.

> "3. When the receiver of a national bank in accordance with an assessment made by the Comptroller of the Currency, directs the shareholders of that bank to pay the assessment to him at his office on or before a specified date, does the cause of action arise and accrue *when* payment is not so made and *where* the shareholder was directed, and had the duty, to make the payment?" (Petitioner's emphasis.)

The order of assessment fixed no place for payment. No one was "directed" to pay any place. The Receiver's notice to Banco shareholders did not even request, much less direct them to pay.

The cause of action *accrued* April 1, 1931, not because of any failure on the part of Banco shareholders to pay, but solely because the Comptroller's instructions to the Receiver did not permit suit until that date.

STATUTES INVOLVED

In addition to the statutes quoted in Petitioner's brief, reference is made to the one held controlling by the court below, the Act of March 27, 1713, providing a six-year period (R. 60). This cause was filed well within that period.

STATEMENT OF FACTS

The gist of Petitioner's statement of facts shows that, as a shareholder in a Delaware holding corporation, Banco, he became liable for a proportionate part of the assessment levied upon shareholders of the National Bank of Kentucky. The holding company's shares represented a proportionate ownership in the trustees' participation certificates held by Banco. Those certificates in turn represented ownership of the bank's shares.

Considerable emphasis is placed by Petitioner upon part of the notice the Receiver sent all of the holding company's shareholders sometime before the assessment was payable. The part stressed is only the introduction to the notice. In that sentence appear the words "payable at the Office of the Receiver." The notice, in its entirety, recites the assessment on shareholders of the bank, a demand for payment upon the Receiver of Banco "as the holder of 540,484 trustees' participation certificates . . . which . . . represent the ownership of 37,721.624 shares of stock in the National Bank of Kentucky" and concludes with the warning that the Receiver would "proceed" against Banco shareholders to collect the assessment liability represented by the participation certificates held by Banco, to the extent the Receiver was unable to collect from Banco. Enclosed with that notice was the Comptroller's order of assessment. The order itself fixed no place for payment (R. 7a). That was conceded by the court in the *Hellmers* case (Hellmers R. 9).

Ownership of three different kinds of certificates imposed liability to assessment. They were (1) the certificates issued by the bank, holders of which were "shareholders" of the bank for all purposes; (2) trustees' participation certificates held by Banco, and (3) Banco's shares. There was more than the mere difference in terminology in these three kinds of papers, though ownership of each imposed assessment liability. The Receiver's warning notice was directed to Petitioner "as a stockholder of the Banco-Kentucky Company," not as a shareholder of the bank or as the holder of trustees' participation certificates.

ARGUMENT

(A) The Pennsylvania Borrowing Statute Is Not the Applicable Statute of Limitations.

Little is presented in this section of Petitioner's Brief which throws light on the question, or which is in controversy. The borrowing statute is, of course, part of the procedural law of the forum but it is not the "general" period of the forum. It is an exception, shortening the general statutory period and should be strictly construed as such. The District Court held that this exception to the general law controlled. The court below held only the general period applied.

Respondent agrees that statutes of limitation are procedural; that the law of the forum governs; and that the courts of Pennsylvania hold its borrowing act applicable to causes of action arising under the substantive law of other jurisdictions. The issue in *Mister* v. *Burkholder*, 56 Pa. Super. 517 (1914), was *when* the statute began to run, not *where* the cause of action arose. There the receiver of a Maryland corporation brought suit in Pennsylvania, against residents of that state, for an assessment ordered by the Maryland court. Under Maryland law, defendant's liability was an asset of the corporation. Under the National Bank Act assessments are not assets of the bank at all. 12 U. S. C. A. § 64, Note 185. The cause of action against shareholders of the Maryland corporation was a creature of Maryland law. There is no state substantive law regarding the assessment liability of national bank shareholders. In *Fletcher's Estate*, 45 D. & C. 673 (1942), the cause of action was based upon a promissory note, made and payable in Maryland. In the eyes of the law, the plaintiff there expressly agreed that his cause of action arose in Maryland. It was a state created right.

While Respondent has not challenged the constitutionality of the borrowing statute, Petitioner cites *Canadian Northern Ry. Co.* v. *Eggen*, 252 U. S. 553, on that point. The case does present an interesting situation, in that there the period of limitations of the "country" where the cause of action arose was borrowed. In that case, the negligence of the Canadian corporation resulted in injuries to the plaintiff while he was in its employ, in the Province of Saskatchewan. Plaintiff brought suit in Minnesota. Of course he could have brought action where the tort occurred, in Saskatchewan. The Minnesota period of limitations for such torts was six y ars. The cause of action, however, arose under the Railw y Act of Canada (255 Fed. 937). Canada had a one-year general statute of limitations. The Minnesota borrowing statute adopted the Canadian one-year period. The tort occurred in Saskatchewan but the laws of that Province had no more to do with it than the laws of Kentucky have to do with Respondent's cause of action. Aside from the fact that there was a localized tort, that case would be comparable to this if the laws of this country provided a general statute of limitations shorter than Pennsylvania's. But here, there is no such period of limitations to be borrowed.

(B) The Kentucky Statute of Limitations Would Be Borrowed under the Pennsylvania Act Only if Respondent's Cause of Action Arose under Kentucky Law.

Petitioner is correct in stating that the statutes of Kentucky require suits on statutory liabilities, if filed in Kentucky, to be commenced within five years after the cause of action accrued, but all discussion of Kentucky procedural or remedial law is completely beside the point here.

Petitioner cites the decision of the District Court in *Anderson* v. *Abbott*, 23 F. Supp. 265 (1939), where, on motions challenging the sufficiency of the Bill of Complaint generally and asserting the defense of limitations, the

court overruled both contentions. Neither in the cause of action before the District Court nor in the instant case is there even a suggestion that Respondent's claim is for a breach of contract, or that it is based upon Banco shareholders' failure to pay at any time or place.

(C) "The 'Cause of Action'—When It Arose."

There is no dispute as to *when* Respondent's cause of action accrued and limitations began to run. The date was April 1, 1931. That is only because "suit cannot be instituted prior to the date fixed for payment and a state statute of limitations does not begin to run until that date." *Fisher* v. *Whiton*, 317 U. S. 217, 218. Petitioner's action or non-action had nothing to do with the accrual of the cause of action.

Petitioner is not quite correct in stating that "the *possibility* of statutory double liability as a holder of stock of a national bank first comes into existence upon the acquisition of the national bank stock." *Liability* attaches to the person of a stockholder upon his acquisition of ownership of the stock. That liability matures upon assessment and a perfect cause of action against a stockholder is consummated upon the Comptroller's order to his receiver to enforce it, except for the grace period allowed by the Comptroller, which must expire before the receiver may proceed.

This Court has discussed the nature of the liability on several occasions. *McClaine* v. *Rankin*, 197 U. S. 154, held that the receiver's cause of action does not exist apart from federal statute and that the basis of such cause of action is the Comptroller's order; that the statute of limitations runs "as against an action to enforce the statutory liability and not an action for breach of contract." *Pufahl* v. *Parks*, 299 U. S. 217, 223, held that a stockholder's obligation to pay an assessment is rendered absolute by the Comp-

troller's action in ordering one. "From the moment of the Comptroller's order of assessment, the bank's Receiver has a claim which would support an action of debt at common law against a living stockholder or the executor of a deceased stockholder."

Again, in *Brown* v. *O'Keefe*, 300 U. S. 598, 603, it was said: "Liquidation coupled with insolvency is the critical event which is capable of transforming a potential liability into one presently enforcible as soon as" a receiver appears upon the scene.

These expressions were approved in *Fisher* v. *Whiton*, supra, holding the only factor necessary to the receiver's right to sue, occurring after the order of assessment, is the mere lapse of time. The latter case also held that, until the date fixed for payment by the Comptroller, the receiver does not even have the right to demand payment, demand being used in the sense that it has some consequence in law.

The court, in *Anderson* v. *Abbott*, 321 U. S. 349, 356, indicated that principles of contract law have no application "to suits to enforce a liability which has this statutory origin." The liability of these Banco shareholders is not "bottomed on fault" (p. 366). Their liability arose as "an incidence of ownership" (p. 368).

There was complete agreement in *Anderson* v. *Abbott* on the point that Banco shareholders' liability is neither "bottomed on fault" nor contractual. The dissenting opinion said (p. 380): "We are dealing with a variety of liability without fault," and (p. 372) "On the contrary, by the terms of the stock certificates and by the law of the corporation's being, their shares were fully paid and non-assessable. These stockholders cannot be said in any way to have assumed any express or implied contractual assessment liability."

Petitioner correctly argues that "the statutory provision does not in and of itself create a cause of action." Re-

spondent's cause of action, so far as any activity or non-activity of Petitioner is concerned, consists solely in identifying him as the owner of property carrying with it liability to assessment. No other fact in the Bill of Complaint was issuable. The Comptroller's assessment was a quasi judicial determination and conclusive upon the Petitioner. *Forrest* v. *Jack*, 294 U. S. 158; *Adams* v. *Nagle*, 303 U. S. 532. That conclusive order, under the federal law, was the basis of this action. *McClaine* v. *Rankin*, *Pufahl* v. *Parks* and *Brown* v. *O'Keefe*, *supra*.

Petitioner persists in adverting to tort and contract law—"a cause of action does not arise until a prohibited act is committed or until there is a failure to perform a required act" and in reiterating—"The failure of the duty which gives rise to a cause of action against a shareholder of a national bank is the failure to pay the assessment to the Receiver on the date and at the place fixed for payment." No prohibited act is involved here and "failure to pay" gets into this case solely by way of hypothesis.

It is argued that "the order of the Comptroller applies with equal force to all shareholders, but the Receiver does not have a cause of action against all shareholders." But that is just what the Receiver does have, as soon as the grace period has elapsed. That is what this Court said in the above quoted language from *McClaine* v. *Rankin*, *Pufahl* v. *Parks* and *Brown* v. *O'Keefe*. The passage of time, from the date of the order to the date when the receiver may institute suit, is not confined to any state or country. That grace period is not a condition precedent to suit against stockholders. *Strassburger* v. *Schram*, 93 Fed. (2d) 246 (C. C. A. 3, 1937); *Reich* v. *Van Dyke*, 107 Fed. (2d) 682 (C. C. A. 3, 1939). National bank stockholders are not even entitled to notice of the assessment or demand for payment. *Brown* v. *Ellis*, 103 Fed. 834 (D. C. Vt., 1900); *Rankin* v. *Miller*, 207 Fed. 602, 611 (D. C. Del., 1913);

Anderson v. *Banks-Miller Supply Co.*, 60 F. Supp. 97 (D. C. W. Va., 1945).

Petitioner says that Respondent's cause of action arose "when the defendants failed to pay the assessment to the Receiver at his office on or before April 1, 1931" and cites as authority the decision of the District Court in *Anderson* v. *Abbott*, with reference to *when* "that *right* of action accrued." That court said nothing about shareholders' failure to pay or where they were to pay. Time was the point being considered, not place.

(D) "The 'Cause of Action'—Where It Arose."

Petitioner represents that "recent decisions of this Court are all to the effect that a cause of action does not arise until a shareholder fails to pay the assessment to the receiver by the date fixed by the Comptroller." It is respectfully submitted that this Court has never so held and the plain implications of its discussion of the nature of shareholders' liability are to the contrary.

Durham v. *Spence*, Law Reports Exchequer Cases, Vol. 6, p. 52 (1870-71), is cited for the discussion of an English statute by one of the judges who reasoned that the time when a cause of action arises also determines the place where it arises. Applied to the case of breach of contract before it, the language of that court is correct. There, a resident of the Cape of Good Hope had promised to marry the plaintiff, a resident of Calcutta, India. The executory groom changed his mind, while both parties were in England, and there renounced the contract. He then returned to the Cape where he was served with a writ under an English statute permitting such service in a "cause of action which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction." The contract had not been made in England but it was performable in England and had been breached there.

Within the terms of that statute, the court held the writ proper because the cause of action was for breach of contract and the breach occurred in England. In addition to the language quoted by Petitioner, Cleasby, J. said:

> "... if a man enters into a contract which is to be performed in England, he, by his own act, subjects himself to the difficulty and can scarcely complain if he is sued for his default in the place where he has said performance shall be made."

In the instant case, Petitioner contracted that he would not pay an assessment. He never agreed to pay any place and he should not complain if he is sued in the only jurisdiction in which he can be reached. This suit is not for Petitioner's default. It is, in the language of the National Bank Act, to "enforce" his individual liability, by the only means possible, by resort to suit in the district of Petitioner's residence.

1. The Statutory Liability Did Not Arise in Kentucky.

Petitioner contends that his statutory liability arose in Kentucky because the bank was located there, its business was transacted there, it failed there, and the Receiver's office was there. The location of the bank and its business in Louisville, Kentucky, are no more indicative that the liability arose in Kentucky than that it arose in Louisville. Neither the ordinances of Louisville nor the laws of Kentucky touch or concern Petitioner's liability. The bank is not suing and the recovery is not for its benefit. The Receiver sues as an officer and agent of the United States, serving as a trustee for persons who were creditors of the defunct bank. *Auten* v. *U. S. Natl. Bank*, 174 U. S. 125. Petitioner's liability was advanced toward maturity as a result of the bank's failure to pay, but that liability still "is collateral and statutory." The law imposed liability on Petitioner, secondary to the bank's debts, which remained

> that the government of the Union, though limited in powers, is supreme within its sphere of action" (p. 404).

Anglo-American Land Co. v. *Lombard*, 132 Fed. 721 (C. C. A. 8, 1904) is cited for the proposition that "the place where a cause of action arises is not determined by inquiring where it may be enforced." In that case all parties were non-residents of Kansas. Suit was filed in the District Court of Kansas to enforce the liability of the stockholders of a Kansas corporation, a state created liability. Certain of the defendants, described in the opinion as the "Ramsden cases," were denied the defense of the Kansas statute of limitations because of another Kansas statute which tolled its running while the obligor was beyond the reach of its courts (132 Fed. 739, 740). On rehearing, it appeared that the Ramsden defendants sought the benefit of a shorter period of limitations of some other state, under the Kansas borrowing statute. The court held that the cause of action arose in Kansas, not where the defendants resided, and hence refused to apply the borrowing statute. It differs from the Pennsylvania statute in that it was applicable only where the case was between non-residents of Kansas. The Kansas borrowing statute sensibly recognized the injustice of permitting residents of that state to borrow the remedial law of some other state where they had never been amenable to suit. The court also said:

> "The constitution and laws of Kansas, operating upon conditions and occurrences within that state, gave the right to sue; and whether and when it shall be barred in the courts of that state is a matter of concern to that state, irrespective of the residence of the parties."

Here the laws of Kentucky do not give the right to sue. Enforcement of the federal right is of concern to Kentucky only when the aid of its courts is sought.

Petitioner cites one tort and two contract cases as authorities for the proposition that a cause of action arises at the place where a prohibited act is performed or where a required act should have been performed. Borrowing statutes were applied in each of those cases. In *Pond Creek Mill & Elevator Co.* v. *Clark*, 270 Fed. 482 (C. C. A. 7, 1920), the action was filed in Illinois for breach of a contract made in Oklahoma. Plaintiff contended that performance was due in Illinois, that the breach occurred there, and that therefore Illinois law controlled. Defendant contended that delivery to a common carrier in Oklahoma was delivery to plaintiff and that Oklahoma law, with a shorter period of limitations, controlled. It was held that the breach of contract occurred in Oklahoma and that the cause of action arose there. Defendant was a resident of Oklahoma and could have been sued in the state whose limitations was borrowed. In *B. & O. R. Co.* v. *Reed*, 223 Fed. 689 (C. C. A. 6, 1915), the Ohio District Court borrowed the Indiana statute of limitations in a tort action for damages for personal injuries sustained in Indiana. The court commented:

> "The conclusion is inevitable that it was competent at all times for the plaintiff below to have sued the company in Indiana."

In *Auglaize Box Board Co.* v. *Kansas City Fiber Box Co.*, 35 F. (2d) 822 (C. C. A. 6, 1929), Kansas law controlled because the buyer under an executory sales contract, committed an anticipatory breach of the contract there. The Ohio court therefore borrowed the Kansas period of limitations. The buyer's place of business was Kansas City and it was suable there.

Not only do we not have here an action for breach of contract or for tort, but in each of the foregoing three cases, Petitioner cites the action was brought in a jurisdiction other than that of the defendant's domicile for the obvious

purpose of avoiding the bar of the statute of limitations of the state where the wrong had been done and where the defendant was suable.

Petitioner cites three cases to support the contention that a cause of action upon a liability created by a federal statute arises in the state where the operative facts occurred. *Bluefields S. S. Co.* v. *United Fruit Co.*, 243 Fed. 1 (C. C. A. 3, 1917), was an action for damages under the Sherman Act. The court did not decide where the cause of action arose. The trial court held the cause barred by the law of the forum, the Pennsylvania six-year general statute of limitations. The Court of Appeals affirmed, though the damages, the "operative" facts, occurred in Louisiana. It is significant that the plaintiff receiver in that case carefully selected the jurisdiction in which to sue "and was induced by the liberality of the Pennsylvania Act to bring it in the District of Pennsylvania, as shown by his petition to the District Court for Louisiana. . . ."

Petitioner next relies on *Hansen Packing Co.* v. *Swift & Co.*, 27 Fed. Supp. 364 (D. C. N. Y. 1939), an action under the federal anti-trust laws. The plaintiff, a Montana corporation, suffered damages in Montana by reason of a price war conducted wholly in that state by defendant's method of doing business there. The New York Court borrowed the Montana period of limitations because defendant's tortious conduct occurred in Montana, noting also that under the Clayton Act, Swift & Company could have been sued in Montana. The Act permits suit either in the district of wrongdoer's residence or where it transacts business. 15 U. S. C. A. § 22. Furthermore, the federal anti-trust laws do not preempt the field. State laws may regulate the same conduct. *Puerto Rico* v. *Shell Co.*, 302 U. S. 253.

Petitioner next cites *Smith* v. *Continental Oil Co.*, 59 Fed. Supp. 91 (D. C. N. Y. 1945), an action under the Fair Labor Standard Act of 1938. Causes of action under that Act

arise under state laws because they are based upon contracts of employment properly within the sphere of state law. In the *Smith* case, the suit was on a simple contract of employment made and performed in Oklahoma. The New York court held the cause of action arose there. Plaintiff sued in New York rather than in Oklahoma because he had permitted that state's period of limitations to expire. It was noted by the court that the defendant was at all times qualified to do and actually was doing business in Oklahoma at the very office where the plaintiff had worked. Plaintiff could have sued in Oklahoma. The only effect of federal law in that case was to add to the terms of an express contract and the parties necessarily entered into that contract with such terms in mind. See *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583; *Rigopoulos* v. *Kervan*, 53 Fed. Supp. 829 (D. C. N. Y. 1943); *Northwest Yeast Co.* v. *Broutin*, 133 F. (2d) 628 (C. C. A. 5, 1943); *Keen* v. *Mid-Continent Petroleum Corp.*, 58 Fed. Supp. 915 (D. C. Iowa 1945).

2. Kentucky Was Not the Place of Performance.

Petitioner states that it is immaterial whether the liability here sought to be enforced is purely statutory or contractual, since in either event, the place of performance was Louisville, Kentucky. But only principles of contract law are urged upon the court. The nature of the liability would seem to have been unequivocally established as purely statutory by the decision of this Court in *Anderson* v. *Abbott*, 321 U. S. 349, with which the court below agreed.

None of the authorities cited in this subdivision of Petitioner's brief even touch upon place of performance by persons liable to assessment as shareholders of national banks. Petitioner merely avers that "the breach of duty (failure to pay the assessment) which created the cause of action occurred in the State of Kentucky." Where, may we ask, can we find any reference to breach of duty as an

element of Respondent's cause of action, except in the arguments of Banco shareholders and the decision of the Sixth Circuit in the *Helmers* case. The motion, which Petitioner contends should be granted, is that the Bill of Complaint shows upon its face that the cause of action arose in Kentucky. His brief insists that he failed to pay in that state and that such nonfeasance is a most material factor in a cause of action which does not even refer to that subject.

A cause of action comprises "every fact a plaintiff is obliged to prove in order to obtain judgment, or, conversely, every fact the defendant would have the right to traverse." *Railway Co.* v. *Dixon*, 179 U. S. 131, 139. See also *Martin* v. *N. & W. R. Co.*, 43 F. (2d) 293, 295 (C. C. A. 4th, 1930). Petitioner concedes the cause, as pleaded, to be legally sufficient.

This contention, that failure to pay is the cause of action, also flies in the face of the accepted rule that payment is an affirmative defense. Had the Bill included an allegation that Petitioner had failed or defaulted in payment, no *proof* of such allegation would be necessary and it would not be put in issue by a denial. See Note 100 A. L. R. 264; *Kallock* v. *Hoaglund*, 239 Fed. 252 (C. C. A. 6, 1917); Rule VIII Federal Rules of Civil Procedure. Non-payment cannot generate a cause of action. Payment, if pleaded and proven, will defeat a cause of action. It will not do to say if Petitioner had paid, he would not be sued and that therefore, his failure to pay is either the whole or a material part of the cause of action. There is frequently a dispute over payment and if, in fact, payment of an obligation has been made, the obligor must plead and prove that fact or he may be compelled to pay again.

The effect of the argument,—that failure to pay was an essential element of the cause of action and that that suppositious fact localized the cause of action within the State of Kentucky,—is to hold Respondent's failure to negative

a possible defense, has resulted in his Bill of Complaint stating no cause of action. It is all the more startling coming from one who admits the cause alleged is good though it is silent on this subject.

The law provides no place of performance for a national bank shareholder's liability of assessment. The Comptroller named none. Certainly the Receiver had no power to unilaterally "fix" a place for performance which Banco shareholders were bound to recognize. Here Petitioner was a shareholder of a Delaware corporation and not only is there an absence of any agreement to pay but he contracted against liability and steadfastly denied any obligation to pay. It would seem that the Receiver's demand on Banco shareholders, had there ever been one, to pay in Louisville, should be no more effective in localizing his cause of action in a suit to enforce payment than it was in securing it.

3. The District of Columbia.

Respondent finds no suggestion in the opinion of the court below that his cause of action may have arisen in the District of Columbia. The language quoted, regarding the offices at which payment might have been accepted,—that is, the Receiver's office or the Comptroller's office,—was used in response to Petitioner's theory of "place of performance." The court below might well have said that, accepting Petitioner's theory, had the Receiver indicated willingness to receive payment in Miami, Florida, the statute of limitations of that state should be borrowed.

Respondent is in complete agreement with Petitioner's statement that "the location of the offices of the Comptroller General and of the United States Treasury in the District of Columbia is not sufficient basis for holding the present cause of action arose in the District of Columbia." That is "the Seat of the Government of the United States." U. S. Const., Art. 1, § 8, Cl. 17. So there is no occasion to answer

Petitioner's extended discussion of the limitations of the District of Columbia or the question whether the District is a state.

(E) The Court of Appeals Applied the Law of the Forum.

Petitioner contends that the language quoted from the lower court's opinion "would mean that no state statute of limitations is applicable" (B., p. 23). The court stated:

> "The applicable statute of limitations in Pennsylvania is six years" (R. 60).

It is submitted that the language of the court below is not a "new" approach and that the decision of *Holmberg* v. *Armbrecht*, 327 U. S. 392 is pertinent here because the liability there sought to be enforced was also a federally created right, as distinguished from a state created right. Whether the right be legal or equitable, the principle—that matters within the exclusive reach of federal substantive law are unaffected by state substantive law—applies. It is the same principle that was discussed in the concurring opinion in *D'Oench Duhme & Co.* v. *F. D. I. C.*, 315 U. S. 347, 447, where it was said that the federal question involved was not

> "to be answered from considerations of geography. That a particular state happened to have the greatest connection, in the conflict of laws sense, with the making of the note involved, or that the subsequent conduct happened to be chiefly centered there, is not enough to make us subservient to the legislative policy or the judicial views of that state."

In that case there was substantive state law on the subject. In the instant case there is no Kentucky substantive law on the subject.

The principle that state law is excluded from the field occupied by federal law is not new: It is as old as the Con-

stitution and was fully discussed in *McCulloch* v. *Maryland, supra*.

Only a few weeks ago this Court again considered the impact of federally created rights on private contracts, contracts within the proper sphere of state law. In *Vanston Bond Holders Committee* v. *Green*, 15 U. S. L. W. 4063, the question arose as to whether bondholders of a bankrupt Delaware corporation were entitled to interest on interest, for which explicit provision was made in their contract. The contract was made in New York and performable in New York. Interestingly, too, the bankrupt's business and property, as well as the property encumbered by the bonds, were in Kentucky. The Kentucky District Court allowed the claim applying its ideas as to the law of New York. The Sixth Circuit Court of Appeals [151 F. (2d) 417] reversed, finding the obligation invalid under New York law. This Court affirmed but disagreed with the Circuit Court in its reasoning, expressing its views in two opinions.

The first opinion noted the significant contacts the situation had with state laws, but concluded that the decision should turn on whether the allowance of the claim would be compatible with the policy of the national law,—that its allowance was not in accord with equitable principles governing distributions in bankruptcy.

In the second opinion it is said:

> "Of course, where *rights* are created by the constitution, treaties or statutes, of the United States and do not owe their origin to the laws of any state, the granting or withholding of interest as part of the remedy *is also* a function of the federal law."

Commenting on *Board of Commissioners* v. *United States*, 308 U. S. 343, it is said:

> "The factors legally decisive of the present problem are the opposite of those which controlled our decision in that case. *There we had a right created by federal*

law. In this case, it was beyond the power of federal law to create the right for which claim was made. . . .

". . . Obligations to be satisfied out of the bankrupt's estate thus arise, if at all, out of tort or contract or *other relationship created under applicable law. And the law that fixes legal consequences to transactions is the law of the several states. Except for the very limited obligations created by Congress* e. g. *Holmberg* v. *Armbrecht,* 327 U. S. 392, *a debt is not brought into being by federal law.* . . . And clarity of analysis justifies *repetition* that *except where federal law,* wholly apart from bankruptcy, *has created obligations* by the exercise of power granted to the federal government, a claim implies the existence of an obligation created by state law.

". . . And no obligation finds its way into a bankruptcy court unless by the law of the state where the acts constituting a transaction occur, the legal consequence of such a transaction is an obligation to pay. (Citing cases.) Where a transaction in its entirety occurs in one state, it is clearly the law of that state that determines if an obligation is born, whether the question becomes relevant in a bankruptcy court or in any other court. But the mere fact that an agreement was made in one state by citizens of a second state for performance in a third, and affecting individuals in all 48 states, does not change the principle inherent in our federal scheme, that the existence of a debt comes about, not by federal law, but by force of some state law, even though the right to enforce the debt, if it exists, may raise federal questions if bankruptcy ensues. Bankruptcy legislation is superimposed upon rights and obligations created by the laws of the state."

Federally created rights are above and beyond the reach of state law and when federally created obligations find their way into the courts, the laws of the state where the acts constituting the transaction occur have nothing to do with their legal consequences. Where, as here, the existence

of an obligation comes about by federal law, the principle inherent in our federal scheme is that considerations of state substantive law are excluded.

If all the incidents giving rise to a common law action for breach of contract or tort occurred in Louisville, their legal consequences, of course, would have to be determined by the law of the state and would attach to the wrongdoer in any court. In such an instance, the territorial boundaries of the City of Louisville or the County of Jefferson would have no meaning because lacking in legal effect. Exactly the same situation is presented here. The cause of action arose within the country because generated by its laws. Whether the Comptroller was in the District of Columbia when he ordered the assessment, whether the bank was located in Louisville, Kentucky, whether the Receiver requested payment there, or whether Petitioner decided not to pay while "at his home—Dimock, Susquehanna County, Pennsylvania," may be of interest geographically, but the "state or country in which" the Receiver's cause of action arose must be determined by the *law* of the latter.

CONCLUSION

The so-called borrowing statute of limitations of Pennsylvania, and the comparable statute of Ohio, though not identical in language, have the same intent. The Pennsylvania Act states:

> "when a cause of action has been fully barred by the laws of the state or country in which it arose. . . ."

The Ohio statute reads:

> "if the laws of any state or country where the cause of action arose limits the time. . . ."

It must be conceded that the assessment sued on in this case, and in the Ohio case, arose under and by virtue of

the laws of the United States. It was brought into existence as a debt or claim by an act of an officer of the United States. In *Rawlings* v. *Ray*, 312 U. S. 96, at p. 99, Chief Justice Hughes stated:

> "We observed that the contingent obligation of a stockholder to pay an assessment was rendered absolute by the Comptroller's action in ordering one and that from the moment of the order of assessment the Receiver had a claim which would support an action at common law against a living stockholder or the executor of a deceased stockholder."

In *Fisher* v. *Whiton*, 317 U. S. 217, Mr. Justice Murphy stated:

> "'The question as to the time when a complete and present cause of action arises in the Receiver to enforce that liability by suit is a Federal question."

It must be conceded also that the laws of the United States did not "fully bar," to use the Pennsylvania language, or "limit the time," the significant language in the Ohio statute, for the commencement of the action to a less number of years than the applicable Pennsylvania or Ohio general limitation statute. It is submitted, therefore, that the general limitation statutes of Pennsylvania and Ohio, six years, is controlling and that neither state is justified in disregarding its own general statutes and borrowing the five-year statute of Kentucky because the laws of Kentucky had nothing whatever to do with creating the debt or claim, it being a Federal right in all respects.

If the Federal statute had "barred" or "limited" suit on the assessment in five years, a Pennsylvania or Ohio forum would properly disregard its six-year general statute and borrow the Federal five-year statute. There is no justification whatever to borrow a limiting statute of a third jurisdiction (Kentucky) which is neither the forum nor the

place under whose laws the debt, claim, or cause of action was created.

The Petitioner in this case and the Respondents in the Ohio case assert that the cause of action arose in Kentucky because the assessment was payable in Kentucky. It was not payable in Kentucky. No place of payment was fixed in the order of assessment. No demand was made upon the stockholders of BancoKentucky by the Receiver until the suit was filed. No such demand is necessary. The only notice given to the stockholders of Banco by the Receiver was that he expected to hold them liable in the event he was unable to collect from Banco, a corporation. In this notice the Receiver did not fix the amount of his claim nor the place of payment.

What is a cause of action? The definitions are numerous. 45 Harv. L. Rev. 802. A cause of action seems to be the "aggregate of operative facts" necessary to establish the plaintiff's debt or claim. That is a matter of substantive law. Concededly the debt arose in this case *when* the Comptroller levied the assessment and this Court has so held. The right to sue on that debt or claim is procedural. In the instant case, as in *Rawlings* v. *Ray* and *Fisher* v. *Whiton, supra*, the debt or cause of action arose *when* the Comptroller levied the assessment but by the very terms of that assessment the right to sue thereon was postponed from February 20th to April 1st. The postponement by the Comptroller of the right to sue on the debt has also been held by this Court to be a matter of federal law.

If no time for payment in futuro had been fixed, the cause of action would undoubtedly have ripened to a right of action. Can it be said that because the assessment order made the assessment payable after the date of the order, that the cause of action had not arisen before the expiration of that period. Is it not more correct to say that the cause of action had arisen on February 20th when the debt was

matured by the order of the Comptroller but that the right to sue—a right of action thereon—was postponed?

It is respectfully submitted that the debt sued on was matured when the order was made; that the cause of action arose under the laws of the United States, not under the laws of Kentucky. It is submitted further that the Comptroller's order postponing the time of payment affected the right to bring the action but did not affect the cause of action itself.

In the opinion of Mr. Chief Justice Hughes in the *Rawlings* v. *Ray* case and the opinion of Mr. Justice Murphy in the *Fisher* v. *Whiton* case, both use the phrase "a complete and present cause of action." It is submitted that the cause of action sued on in this case was complete when the Comptroller levied the assessment, and was a complete and present right of action except for the grace period.

It is respectfully submitted that the judgment below should be affirmed.

ROBERT S. MARX,
FRANK E. WOOD,
HARRY KASFIR,
VINCENT C. VELDORALE,
WM. C. KELLY,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

Nos. 593 AND 656.—OCTOBER TERM, 1946.

Francis R. Cope, Jr., Petitioner, 593 *v.* A. M. Anderson, Receiver of the National Bank of Kentucky.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.
A. M. Anderson, Receiver of the National Bank of Kentucky, Louisville, Kentucky, Petitioner, 656 *v.* Lawrence S. Helmers, Lewis Levi, Oscar Schwartz, Alice Sterne.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[June 2, 1947.]

MR. JUSTICE BLACK delivered the opinion of the Court.

In *Anderson* v. *Abbott*, 321 U. S. 349, we held that the shareholders of BancoKentucky Company, a bank-stockholding company, were liable under 12 U. S. C. §§ 63, 64, for an assessment on shares of an insolvent national bank held in the portfolio of the holding company. That suit was brought in a Kentucky District Court against Banco stockholders residing in that District. These suits in equity were brought in Federal District Courts in Ohio and Pennsylvania to enforce assessments against Ohio and Pennsylvania stockholders of Banco. In No. 656 the District Court in Ohio overruled a motion to dismiss made on the ground, among others, that the bill showed on its face that the action was barred by an Ohio statute of limi-

tations.[1] The Sixth Circuit Court of Appeals reversed. 156 F. 2d 47. In No. 593 the Third Circuit Court of Appeals reversed the decision of the District Court in Pennsylvania which had held the action there barred by the Pennsylvania statute of limitations. 156 F. 2d 972. We granted certiorari to consider both cases. — U. S. —.

There is no federal statute of limitations fixing the period within which suits must be brought to enforce the statutory double liability of shareholders of insolvent national banks. For this reason we look to Ohio and Pennsylvania law to determine the period in which these suits may be brought. *McDonald* v. *Thompson*, 184 U. S. 71; *McClaine* v. *Rankin*, 197 U. S. 154, 158; *Rawlings* v. *Ray*, 312 U. S. 96, 97. Even though these suits are in equity, the states' statutes of limitations apply. For it is only the scope of the relief sought and the multitude of parties sued which give equity concurrent jurisdiction to enforce the legal obligation here asserted. And equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy. *Russell* v. *Todd*, 309 U. S. 280, 289 and cases cited. See also *Guaranty Trust Co.* v. *York*, 326 U. S. 99; *Holmberg* v. *Armbrecht*, 327 U. S. 392, 395–396.

But even though the period in which suit must be brought is governed by state limitations statutes, we have previously decided that the question of when the applicable state statute of limitations begins to run depends upon when, under federal law, the Comptroller of the Currency, or his authorized agent, is empowered by federal law to bring suit. And the Comptroller's agent,

[1] For convenience, the motion was made by only four defendants who are respondents here. The case was continued as to the others pending final disposition of the question concerning the statute of limitations, the only ground of the motion to dismiss upon which the District Court passed.

the Receiver here, could not bring these actions until the date for payment fixed by the Comptroller. *Rawlings* v *Ray, supra*, 98, 99; *Fisher* v. *Whiton*, 317 U. S. 217, 220, 221. The date for payment fixed by the Comptroller in this instance was April 1, 1931. These actions were instituted more than five but less than six years after the payments became due under the Comptroller's assessment order.

With regard to No. 656, the Ohio proceeding, the Ohio statute of limitations provides that suit "upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued." Ohio Gen. Code (Page, 1939) § 11222. This statute describes the liability sued on here, and if applicable does not bar this suit. But the scope of this general provision is narrowed by another known as the "borrowing statute" which reads:

> "If the laws of any state or country where the cause of action arose limits the time for the commencement of the action to a less number of years than do the statutes of this state in like causes of action then said cause of action shall be barred in this state at the expiration of said lesser number of years." Ohio Gen. Code (Page, 1939) § 11234.

If the cause of action arose in Kentucky, the "borrowing statute" applies Kentucky's statute of limitations, and this suit is barred. For Kentucky's law requires that an "action upon a liability created by statute . . . shall be commenced within five years after the cause of action accrued." Ky. Rev. Stat. (Baldwin, 1943) § 413.120.

The Receiver contends that the Ohio borrowing statute's language "the laws of any state or country where the cause of action arose" has reference to "a system of jurisprudence other than Ohio's," and does not refer "necessarily to territorial limits" within which events occurred

giving rise to an enforceable obligation. The place where the events giving rise to a cause of action occur is said to be "important only insofar as the laws of that place are controlling." Under this argument, the cause of action here could not have "arisen" in any state since the statutory obligation of shareholders was not imposed or controlled by state law. Hence, the argument runs, the Ohio law did not contemplate borrowing any state statute of limitations in a case where liability is governed by federal law. And no federal statute of limitations could be borrowed in this case for none existed. Therefore, it is argued, only Ohio's general six-year statute of limitations applies.

The consequence of accepting this contention would be that the Ohio borrowing statute would have no effect at all as to suits brought in Ohio state courts to enforce actions authorized by federal law. For, of course, Ohio courts could never borrow a non-existent federal statute of limitations. And if there were a federal statute of limitations governing a federally created right, that statute would control of its own force. *Herget* v. *Central National Bank & Trust Co.*, 324 U. S. 4. We have been cited to no decision by any Ohio court which would lead us to believe that its borrowing statute should be given such a sterilizing interpretation. *Cf. Townsend* v. *Eichelberger*, 51 Ohio St. 213, 216, 38 N. E. 207, 208.

We find it unnecessary to our decision to discuss the contentions made here concerning differences between a "cause of action" and a "liability." The Ohio Supreme Court has itself said that a "cause of action is the fact or combination of facts which gives rise to a right of action, the existence of which affords a party a right to judicial interference in his behalf." *Baltimore & O. R. Co.* v. *Larwill*, 83 Ohio St. 108, 115–116, 93 N. E. 619, 621. We have been referred to nothing in Ohio statutes or decisions which indicates that it used "cause

of action" in any different sense in its borrowing statute. The purpose of the state's borrowing statute[2] as those of other states,[3] was apparently to require its courts to bar suits against an Ohio resident if the right to sue him had already expired in another state where the combination of circumstances giving rise to the right to sue had taken place. Moreover, limitations on federally created rights to sue have similarly been considered to be governed by the limitations law of the state where the crucial combination of events transpired. *Seaboard Terminals Corp.* v. *Standard Oil Co.*, 24 F. Supp. 1018, 104 F. 2d 659; *Bluefields S. S. Co.* v. *United Fruit Co.*, 243 F. 1, 19–20. See *Campbell* v. *Haverhill*, 155 U. S. 610; *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 203 U. S. 390, 397.

Our appraisal of the Ohio borrowing statute, the opinions of the courts of that state, and the circumstances leading to this suit, persuade us that the cause of action "arose" in Kentucky within the meaning of the Ohio borrowing statute. The bank was authorized to do its banking business in Louisville and did business in no other place. See 12 U. S. C. § 81. Nor was this bank's business any the less local, because its shares were held in the portfolio of a Delaware corporation. Many provisions of federal law make national banks, in important aspects, peculiarly local institutions. See 12 U. S. C. §§ 30, 33, 34 (a), 36, 51, 62, 72. For jurisdictional purposes, a national bank is a "citizen" of the state in which it is established or located, 28 U. S. C. § 41 (16), and in that district alone can it be sued. 12 U. S. C. § 94. True, when insolvency occurs, there is a shift in bank management, but the bank's activities are still necessarily rooted in its local habitat. In this case the Receiver's office was located in Louisville, the home of the bank; payment of assessments,

[2] See 25 Ohio Jurisprudence (1932), 435–440.

[3] See Note, 75 A. L. R. 203 (1931); Note, 35 Col. L. Rev. 762 (1935).

like other obligations due the bank, could have been made there, and, in fact, shareholders were notified by the Receiver to pay at his office in Louisville.* Liquidation of a local bank, like its daily operations, must from necessity and in the interest of good business be carried on, in the main, in the community where the bank did business with its depositors and other customers. Practically everything that preceded the final fixing of liability of shareholders derived from Kentucky transactions. We have been referred to no Ohio decisions, and have been unable to find any, which contradict our conclusion that events which culminated in this suit justify our holding that this "cause of action" "arose" in Kentucky within the meaning of the Ohio statute. See *Hunter* v. *Niagara Fire Ins. Co.*, 73 Ohio St. 110, 76 N. E. 563; *Alropa Corp.* v. *Kirchwehm*, 138 Ohio St. 30, 33 N. E. 2d 655; *Payne* v. *Kirchwehm*, 141 Ohio St. 384, 48 N. E. 2d 224; *Bowers* v. *Holabird*, 51 Ohio App. 413, 1 N. E. 2d 326; *National Bondholders Corp.* v. *Stoddard*, 22 Ohio O. 145. See also *Hilliard* v. *Pennsylvania R. Co.*, 73 F. 2d 473, 475–476; Note, 15 U. of Cin. L. Rev. 337 (1941); Note, 21 Ohio O. 107 (1941). Therefore the judgment in No. 656 is affirmed.

In No. 593, the Pennsylvania action, the same considerations are controlling. The general statute of limitations of that state which would be applicable to this action had it arisen in Pennsylvania, like Ohio's general statute, provides a six-year period in which this suit could be brought. 12 Pa. Stat. § 31 (Purdon, 1931). But Pennsylvania also has a "borrowing statute" which provides: "When a cause of action has been fully barred by the laws of the state or country in which it arose, such bar shall be a complete defense to an action thereon brought

*Whether notice by the Receiver to pay at a particular place would alter the conclusive situation as to where a cause of action might be considered to "arise" under other circumstances is a question we need not decide.

in any of the courts of this commonwealth." 12 Pa. Stat. § 39 (Purdon, 1931). Our review of Pennsylvania decisions construing this statute persuades us that the borrowing statute is applicable to this case, that under that statute this cause of action "arose" in Kentucky, and that the five year statute of Kentucky bars this action. See *Mister* v. *Burkholder*, 56 Pa. Super. 517; *Fletcher's Estate*, 45 Pa. D. & C. 673, 674; *Bell* v. *Brady*, 346 Pa. 666, 31 A. 2d 547; *Shaffer's Estate*, 228 Pa. 36, 40, 76 A. 716, 717. *Cf. Rosenweig* v. *Heller*, 302 Pa. 279, 153 A. 346. See also Notes, 88 U. of Pa. L. Rev. 878 (1941), 4 U. of Pitt. L. Rev. 215 (1938). The judgment of the Circuit Court of Appeals in No. 593 is therefore reversed.

So ordered.

THE CHIEF JUSTICE took no part in the consideration or decision of these cases.